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SUBJECT: CONGO/BRAZZAVILLE INVESTMENT CLIMATE REPORT 2009

1.REPUBLIC OF THE CONGO - INVESTMENT CLIMATE REPORT - 2009

OVERVIEW:

Located in Central Africa and straddling the equator, the Republic of the Congo (ROC) covers an area of 142,000 square miles, slightly larger than the State of New Mexico. Its population is estimated at between 3.5 million to 4 million inhabitants, with a population density of 8.7 people per square kilometer. The country is bordered by Cameroon and the Central African Republic to the north, Angola (the Cabinda enclave) to the south, the Democratic Republic of Congo to the east and the Republic of Gabon and Atlantic Ocean to the west. Republic of the Congo has three climatic zones: equatorial in the north, sub-equatorial in the center and humid tropical in the south.

The country is governed in accordance with the "Constitution of January 20, 2002" which calls for a bicameral legislature, composed of the Senate and National Assembly; a Judicial Branch, represented by the Supreme Court, Court of Accounts and Budgetary Discipline, Court of Appeals, and the Constitutional Court; and, an Office of the Prime Minister with the responsibility to coordinate government activities.

A civil war from 1997-1999, followed by sporadic fighting that ended with peace agreements in 2003, destroyed much of the country's infrastructure. The government designed and implemented an "Interim Post Conflict Program: 2000-2002" after an in-depth analysis of the country's economic situation, which had deteriorated considerably during the conflict period. The program's central objectives were to restore the optimum conditions necessary for economic and social revitalization, and to rehabilitate all sectors of the economy. It has been financed primarily by the country's own natural resources, mainly its oil revenues. The oil sector has been the major catalyst for growth for the past three decades, contributing 80 percent of the country's gross domestic product.

Presidential elections are set for July 5, 2009. President Denis Sassou Nguesso, who has ruled intermittently for thirty years, is expected to announce his candidacy shortly.

-- Openness to Foreign Investment

During the 1970s and 1980s, the Congolese economy had been dominated in large measure by state-owned companies. However, the promulgation of Law 24/94 on August 10, 1994, which introduced a framework for privatization, and its addendum, Law 10/95 introduced on April 17, 1995, which identified specific sectors to be privatized, ushered in a new economic era, receptive to national, private and foreign investments.

The framework of the laws defines the privatization process accordingly:

- a transfer of property from the government to the private sector;

- a call for private sector capital or expertise managed through concessions or contract to conduct a public sector activity.

Public companies have been divided into two categories of privatization: (a) the first consists of six major public companies supporting the oil, transport, telecommunication, water and electricity sectors; and, (b) the second includes all other agricultural and industrial companies in the farming, forestry, hotel, banking, transport and transit sectors.

The privatization program has suffered delays in its implementation due to disruptions in the domestic economy in the aftermath of the 1997-2003 war.

As a member of Central African Economic and Monetary Community (CEMAC), and by default also affiliated with OHADA (African Business Law Harmonization Organization), the Republic of the Congo provides more liberal terms and investment guarantees to foreign investors than non-members. Foreign companies based in the Republic of the Congo enjoy the same rights and privileges as Congolese companies under existing business laws and statues. However, Article 11 of Law #19-2005 on November 24, 2005, prohibits foreign ownership in the retail and bakery trades and urban and long-haul transport sectors, limiting ownership to Congolese nationals only. The ownership law had not fully taken effect by close of 2007, however; all existing businesses will be grandfathered in and not subject to the ownership rules.

In addition, the Investment Charter, established by Law 6-2003 on January 18, 2003, offers a range of advantages to foreign investors such no discrimination or disqualification on types of investment, and equal justice under Congolese law.

Recent indicators show an increase of business exchanges between the Republic of the Congo and People's Republic of China. An increasing number of large public works projects, including roads, dams, railroads and general construction, are being awarded to Chinese companies. Many other Asian companies are investing in the forestry sector.

The judicial system upholds the sanctity of contracts; parties

-- Conversion and Transfer Policies

The Republic of the Congo is a member of the French Franc Zone (Communaute Financiere Africaine - CFA), a member of the Central African Monetary Union (UMAC) and the Bank of the Central African States (Banque des Etats de l'Afrique Centrale - BEAC). BEAC serves as the Central Bank for Cameroon, Central African Republic, Chad, Republic of the Congo, Equatorial Guinea and Gabon.

The common currency used in Republic of the Congo and other African nations of the French Franc zone, including UMAC members, is the CFA Franc (CFA F). The CFA F is linked to the Euro and considered as an intervention monetary unit at a fixed exchange rate of 0.001524 Euro/CFA franc. This agreement guarantees the availability of foreign exchange and the unlimited convertibility of the CFA franc. It also provides for considerable monetary stability to the Republic of the Congo and other countries of the region.

Funds are freely transferred within the French franc zone and there are no restrictions on importing foreign capital into the ROC.

-- Expropriation and Compensation

During the 1970s and 1980s, the political landscape of the ROC was marred by turbulent policies and Marxist-Leninist ideology

which led to nationalization of private companies and the departure of many foreign investors. However in 1992, the ROC completed a transition to multi-party democracy, and its former economic and political views moderated considerably following the collapse of the Soviet Union.

The current government is eager to attract investors and to achieve privatization of most state-owned companies.

There is no evidence that foreign investors are discriminated against in any fashion or have been subjected to expropriation of assets. Foreign and national firms established in Republic of the Congo operate on an equal basis.

-- Dispute Settlement

The majority of foreign and U.S. private companies based in the Republic of the Congo are invested in the oil and timber sectors. Relations between the government and oil companies are regulated on the basis of Production Sharing Agreements (PSAs). Although there have been some reports of constraints on recovery of VAT reimbursements or customs fees, very few private investment disputes involving foreign businesses have been lodged in recent past years. Most cases stem from companies purchasing Congolese debt in secondary markets. For example, in 2005, there was a dispute between the Republic of the Congo and a US investor who purchased Congolese debt in a secondary market. The investor, who claimed that the Republic of the Congo defaulted on the debt, won a judgment in US courts in April 2005.

The Republic of the Congo is a member of the World Trade Organization (WTO) and is party to other international treaties governing trade and commerce. Binding international arbitration of investment disputes is accepted.

Public Law 6-2003, which established the country's Investment Charter, states that investment disputes will be subject to settlement under Congolese law. However, independent settlement or conciliation procedures can be adopted by the parties. These procedures are governed by or arbitrated under:

- the convention regulating the Community Justice Court;

- the treaty of October 17, 1993, implementing the African Business Law Harmonization Organization (OHADA);

- The International Center for the Settlement of Investment Disputes (ICSID).

-- Performance Requirements and Incentives

Presidential decree No: 2004-30 of February 18, 2004, defines the requirements for foreign and national companies to benefit

from incentives offered by the Congolese Investment Charter. Four types of incentives are considered:

(a) Incentives to export.

(b) Incentives to reinvest the company's profit in the Country.

(c) Incentives for business implementation in remote areas or areas which are difficult to access.

(d) Incentives for social and cultural investment.

In the oil and forestry sectors, companies are required to respect the environment, particularly regarding water pollution safeguards and forest regeneration. All forestry companies, both foreign- and locally owned, are also required to process 85 percent of their timber in the country and to sell it abroad as furniture or otherwise transformed wood. Companies are allowed to sell just 15 percent of their wood production as natural timber.

There are no known performance enforcement procedures for foreign companies. There are no known restrictions on U.S. or

other foreign firms from participating in Congo-government financed or subsidized research and development programs.

-- Right to Private Ownership and Establishment

The law stipulates that each individual, without distinction of nationality, residing in the territory of the Republic of the Congo, has the right to establish a business in agriculture, mining, industry, forestry, handicrafts, commerce or services in accordance with existing policies. Local and foreign investors have the right to own and establish lawful business enterprises and all forms of remunerative activity.

The Republic of the Congo guarantees the legal right and freedom of private business to:

- import or export raw materials or products, equipment and materials necessary for economic activity;

- define their own production, commercial and hiring policies and,

- select suppliers and customers and set prices.

Given these guarantees, the Republic of the Congo should be one of the more progressive and open economies in the Central African region to encourage and promote foreign private business development. At present, oil, timber and some commerce are either operated or controlled by foreign investors.

-- Protection of Property Rights

As a member of the Central African Economic and Monetary Community (CEMAC), Congo is automatically a member of the African Intellectual Property Organization (AIPO). AIPO is charged with issuing a single copyright system which is enforceable in all CEMAC member states. As a member of the World Trade Organization (WTO), Congo is conforming its legislation to trade-related aspects governing intellectual property.

The Ministry of Commerce and other interested departments work together to address issues related to counterfeit products and other items entering the country illegally. Containers of contraband items, such as medical supplies and food products, are frequently seized and destroyed by local authorities.

-- Transparency of the Regulatory System

Transparency in the government's economic management system is an ongoing concern. The Public Finance Law of 2000 governs transparency and public management.

Recognizing that sustained progress in good governance is a key condition to the country's development, the government continues to implement a "Transparency and Good Governance Project." The principal objectives of the project, originally funded by the World Bank in 2002 at USD $7.5 million, included transparency in the budget process; management of natural resources; capacity building in the government and civil society; support for re-establishment of basic public services, particularly health and education; and combating the spread of HIV/AIDS.

There is still need for improvement in the areas of transparency and economic management, a key area of concern with the IMF and the World Bank in the ongoing discussions regarding debt relief for Congo under the Higher Indebted Poor Countries (HIPC) initiative. IMF and other international organizations remain critical of the government's inability to explain budgetary and oil revenue spending.

In the near term, the oil sector will likely remain the key contributor of revenue to the state treasury. Therefore, the focus on full mobilization of oil revenue is essential if the government hopes to strengthen its fiscal situation and to implement poverty reduction programs which will benefit the population.

-- Efficient Capital Markets and Portfolio Investment

The Republic of the Congo does not have a stock exchange. Monetary and credit policies are conducted by the BEAC in the regional context of CEMAC. The main objective is to ensure the stability of the common regional currency.

The privatization of Congo's main commercial banks has been completed; however their financial health remains fragile. The Congo's economy is predominantly cash-based and commercial banks service only a small segment of the market.

The weak banking sector impedes the flow of credit to small businesses, and appears to be a major constraint to the country's economic growth and development.

-- Political Violence

The young Congolese democracy, established during a National Conference in 1991, experienced severe trials in the early 1990s and eventually led to civil war which destroyed major portions of the city's infrastructure in Brazzaville in 1997-1999.

A tense period of unrest ensued as militias loyal to the former President Pascal Lissouba, the former Prime Minister Bernard Kolelas, and President Sassou-Nguesso vied for control of the country. Peace accords were signed in 2003 and stability has returned, although some areas of the country remain volatile.

By late 2007, Sassou-Nguesso had offered a general amnesty to his former adversaries and adopted a political platform focused the nation's attention on peace and reconciliation, political unity, and economic and social development. Kolelas has returned to the country but Lissouba has not. The next presidential elections will be held in July, 2009.

-- Corruption

Corruption remains a major constraint to the Congo's economic development. The Anti-Corruption Ministry, established in 1999, did not have its mandate renewed in 2004, after a government reshuffle. To date, no corruption case has been brought before the current oversight body, the Court of Accounts and Budgetary Discipline.

Congo's formal economy is based primarily on the petroleum sector. Oil revenues represent more than 70 percent of the country's total export revenue. However, oil sector revenue management is still somewhat opaque and is thus widely believed to be subject to corruption.

In November 2007, the London Club forgave 77 percent of the country's debts, or about USD $643.3 million. Also in November 2007, the country was readmitted to the Kimberley Process, allowing diamond exports to resume. The Republic of the Congo had been suspended from the Kimberley Process in 2004 after audits showed its exports were vastly greater than diamond production capacity. Current diamond capacity is estimated at 5,000 carats with a potential for 50,000 to 70,000 carats.

The Republic of the Congo continues to be subject of several lawsuits by companies or firms who purchase debt on the secondary markets. In November 2005, the High Court of Great Britain ruled in favor of a creditor which had seized assets belonging to the international trading company Glencore. The judgment revealed egregious conflict of interest issues involving the director of SNPC, the State Oil Company, and senior Republic of Congo officials. These individuals were charged with selling the state's oil through an elaborate web of offshore trading companies. In 2007, SNPC won an appeal of a similar creditor's lawsuit, when the U.S. Second Court of Appeals ruled on procedural grounds that the Foreign Sovereign Immunity Act applied to SNPC, thus
limiting a claim filed by Kensington International Limited; the case remains active in other U.S. and European courts.

The Republic of the Congo, granted Heavily Indebted Poor Countries (HIPC) status in 2006, is currently engaged in

negotiations on repayment agreements to its international creditors, and debts owed to the members of the Paris Club, who also have forgiven the lion's share of the country's debt. However, HIPC completion point has not yet been reached.

Corruption has not been specifically identified by U.S. companies as an obstacle to investment in the Republic of the Congo.

There is no known enforcement of criminal laws against paying bribes, but the practice is believed to be widespread; no company is known to deduct corrupt payments from its taxes because bribes are not considered official or legal.

-- Bilateral Investment Agreements

On February 12, 1990, the Republic of the Congo signed a Bilateral Investment Treaty with the United States. The treaty entered into force on August 13, 1994. Bilateral investment agreements with France and China have been in place for many years, as well as fiscal agreements with other CEMAC countries.

Commercial and bilateral agreements to safeguard investments have been signed with several African nations, including South Africa in 2005 and Namibia in 2007.

-- OPIC and Other Investment Insurance Programs

The overseas Private Investment Corporation (OPIC) is active in the Republic of Congo with a political risk insurance program covering MINOCO (Minoterie du Congo SA), a flour mill company owned and operated by the Seaboard Corporation. The Republic of Congo is also a member of the Multilateral Investment Guarantee Agency (MIGA).

-- Labor

The state civil service bureaucracy is the country's largest employers, with an estimated 62,000 employees. The World Bank and other international lending institutions have pressed for reform in public sector hiring practices. Unemployment among Congo's youth is approximately 40 percent, as workers seeking to leave behind the rural agricultural economy find limited opportunities in urban centers, state-owned enterprises and public service.

Except for members of the police, gendarmerie and armed forces, the Congolese Constitution provides workers with the right to form unions and to strike, subject to conditions established by law. The Labor Code allows for collective bargaining; however, it is not widespread due to the social and economic disruption and extreme hardship that occurred during much of the 1990s. A 2001 labor agreement, "Social Truce," renewed in 2005, was opposed by some labor organizations, mainly the teachers' union, which called a strike to obtain back-payment of salaries from the Government.

The Labor Code states that a standard work period should not exceed 40 hours per week.

-- Foreign Trade Zones/Free Trade Zones

As a member of the Central African Customs Union (UDEAC), the Republic of the Congo belongs to a free trade zone which includes Cameroon, Central African Republic, Chad, Equatorial Guinea and Gabon. Within this zone, imports are subject to very low or no customs duties. The CEMAC zone is also considered as a preferential trade area, for Congo and other member countries.

There are no foreign trade zones or free ports established in the country, however, this issue is currently under consideration by the Ministry of Commerce.

-- Foreign Direct Investment Statistics

The Congo's economy relies primarily on exploitation of natural resources rather than industrial production, and foreign direct investment is concentrated in the oil and forestry sectors. The

government has increased its investment promotion activity in the communication and banking sectors, and investments in both sectors have been rising.

The total Republic of the Congo trade with the U.S. was US $698,078,976 in 2008. Total U.S. exports were $63,670,461 while imports were valued at $634,408,515. The 2008 trade balance with the U.S. was negative $570,738,054.

According to recently released figures by the International Monetary Fund (IMF), the Nominal GDP was CFCA 4,800 billion = US $10 billion in 2008. The IMF also reported that GDP per capita was US$2,400 in 2008.

Real GDP grew at an estimated rate of 2.8 percent in 2008, 3.7 percent in 2007, 6.1 percent in 2006 and 7.8 percent in 2005.

There were no figures available for 2008 U.S. FDI stock flow in Republic of the Congo or Republic of the Congo FDI stock flow in the U.S.

Following are major companies registered as foreign businesses by the Congolese Chamber of Commerce.

Agriculture and Industry

A) Oil Sector:
- Chevron Overseas
- CMS Nomeco Congo
- Congorep
- Eni Congo
- Total
- Zetah Congo
- Puma International
- X-Oil
- Total Congo
- Murphy Oil

B) Forestry sector:
- CIB
- Cristal
- IFO
- Likouala Timber
- Thanry Congo
- Congo Timber
- FORALAC
- MAN FAI TAI
- TRABEC

C) Banking sector:
- Credit Lyonnais
- Banque Congolaise Internationale
- ECOBank
- La Congolaise de Banques
- BGFIBANK

D) Communication sector:
- AFRIPA Telecom Congo
- Zain (formerly Celtel Congo)
- Ets. Temi
- MTN
- Warid Telecommunication

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